

Appl. No.: 10/692,472  
Amdt. Dated: 11/18/2005  
Off. Act. Dated: 07/20/2005

### **REMARKS/ARGUMENTS**

Reconsideration of this application is respectfully requested in view of the foregoing amendments and discussion presented herein.

1. **Rejection of Claims 1-3, 6, 9, 11-12 and 16-17 under 35 U.S.C. § 102(b).**

Claims 1-3, 6, 9, 11-12 and 16-17 were rejected under 35 U.S.C. § 102(b) as being anticipated by Feng (U.S. No. 5,857,985).

**Claims 1, 23 and 24.** Claims 1, 23 and 24 are the independent claims in this application. The rejected claims depend from independent Claim 1 which recites a "housing with at least one a housing including at least one massage surface; a remote control input interface for enabling a user to control at least one electronic entertainment device; and at least one motor located at least partially within said housing for providing vibrating movement to said massage surface." Claim 1 recites a remote control interface structure that is not present in the Feng patent cited by the Examiner.

The Feng patent discloses a massage device with a fixed planar frame and an oscillating massage device 10 and elastic surface 30. The massage unit has a control box 41 with a control panel 40 tethered to the massage device by an electric wire cable 42. The control panel 40 has bidirectional switch 104, display LED's 121-125, and audio input jack 105 and output jack 131 that "allows the user to plug in earphones and hear music during massaging" (Col. 2, lines 40-42). The function of the control switch 104 is summarized in the abstract as follows: "A control switch...being arranged to switch between an audio control mode in which a strength of oscillations of said massager is controlled by an audio signal input through an audio input jack, and an internal signal control mode in which the oscillating device is caused to oscillate in response to an internal fixed or variable internal signal source." Accordingly, the

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"strength of the [oscillations of the] massage device is adjusted by the frequencies of music" (Col 1. lines 45-48).

It can be seen, therefore, that Claim 1 recites one or more elements which are not found in the Feng reference cited by the Examiner. Specifically, the Feng patent does not provide "*a remote control input interface for enabling a user to control at least one electronic entertainment device*" as claimed in Claim 1. While the Feng control panel 40 had switches to control the function of the massage unit, it does not have any interface structure that enables the user to "*control at least one electronic entertainment device.*" Nor is there any suggestion, teaching or motivation that can be found in the Feng reference from which a person having ordinary skill in the art would find it obvious to modify a massage unit of Feng to correspond to the limitations described in the Applicant's claims. Accordingly, the Applicant respectfully submits that Claim 1, as well as the claims that depend therefrom, are not anticipated by Feng. The Applicant respectfully requests that the rejection of Claims 1-3, 6, 9, 11-12 and 16-17 under 35 U.S.C. § 102(b) be withdrawn.

2. Rejection of Claims 4-5, 7-8, 10, 13-15 and 18-24 under 35 U.S.C. § 103(a).

The Applicant respectfully traverses the rejection, and believes that the Examiner has not established a prima facie case of obviousness with respect to Claims 4-5, 7-8, 10, 13-15, and 18-24. Obviousness is tested by "what the combined teaching of the references would have suggested to those of ordinary skill in the art" (See In re Keller, 208 U.S.P.Q. 871 (CCPA 1981)), but it "cannot be established by combining the teachings of the prior art to produce the claimed invention, absent some teaching or suggestion supporting the combination." Thus, "teachings of references can be combined only if there is some suggestion or incentive to do so." Here, the Examiner has not established that one of ordinary skill in the art would find any teaching, suggestion, motivation or incentive for combining the references. The Applicant respectfully submits that the Examiner has relied upon hindsight reconstruction to pick

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and choose among isolated disclosures in the prior art to deprecate the claimed invention. Accordingly, the Applicant respectfully requests that the rejections be withdrawn.

As indicated above, the Feng patent does not disclose a *"a remote control input interface for enabling a user to control at least one electronic entertainment device"* as claimed in Claim 1, 23 and 24. Nor is there any suggestion, incentive or motivation to provide this functionality found in Feng or any of the other patents cited by the Examiner. Accordingly, all of the proposed combinations do not render the invention and therefore all of the claims are patentable over the combined references and the rejections should be withdrawn.

(a) Claims 4-5.

Claims 4-5 were rejected under 35 U.S.C. §103(a) as being obvious in view of the combined teachings of *Feng* (5,858,985) and *Moriyasu* (6,027,463). In particular, the Examiner states that "Feng...discloses a hand held integrated remote control and massage device, substantially as claimed..." and "Moriyasu teaches ...a remote control input comprising at least one light source and a touch screen..." The Examiner also states, "The light source would be used to locate the device in the dark."

As stated above, the Feng reference does not disclose an integrated remote control and massage device and therefore the combination of Feng and Moriyasu does not render the invention as claimed in Claims 4-5.

Furthermore, the Applicant submits that there is no suggestion, incentive or motivation found in either of the references to modify the massage apparatus of Feng with a light source and a touch screen found in Moriyasu. The Feng and Moriyasu devices perform the same function, namely, they are capable of modulating the timing and strength of oscillations of vibration with an audio input from any type of audio source including TV, radio and other sources known in the art. The control pad shown in 13A of Moriyasu provides control over many oscillating massage units in a planar mat

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that engages the whole body of the user on a chair or on the floor. There is no incentive or motivation in Feng to provide a light source because the control box is tethered to the apparatus by a cable and it will not get lost or be inaccessible in the dark.

(b) Claims 7-8, 10 and 18-19.

Claims 7-8, 10 and 18-19 were rejected under 35 U.S.C. §103(a) as being unpatentable over *Feng* (5,858,985) in view of *Trivett* (6,535,125). In support of the rejection the Examiner stated, "Feng does not disclose the device having a locator, a receiver, a speaker, a flashing light or a rechargeable battery."

In response, the Applicant submits that the combination of Feng and Trivett proposed by the Examiner does not disclose all of the elements of the Claimed invention and that there is no suggestion, incentive or motivation found in either patent to make the combination. Trivett discloses a locator with a signal sending unit in a housing and a receiving unit within a housing that is mounted to a remote control device with hook and loop fasteners. Trivett does not disclose a "flashlight" or a "grippable portion compris[ing] at least one plastic or thermoplastic elastomer" or a "rechargeable battery."

Moreover, the massage unit disclosed in Feng is large enough to cover the back of the user and has two handles to facilitate that use with two hands. The Feng device is not going to get lost under a pillow or down the back of the couch as is experienced with hand held remotes. Therefore, there is no incentive or motivation to provide a locator to the Feng apparatus found in either Feng or Trivett.

Furthermore, neither the Feng nor the Trivett patents disclose a remote control interface enabling a user to control at least one electronic entertainment device." Accordingly, the combination does not render the invention as claimed in Claims 7-8, 10 and 18-19. Accordingly, the Applicant respectfully requests that these claim rejections be withdrawn.

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(c) Claims 13-15.

Claims 13-15 were rejected under 35 U.S.C. §103(a) as being unpatentable over *Feng* (5,858,985) in view of *Moriyasu* (6,027,463) and *Diamond* (CA '780). In support of the rejection, the Examiner stated, "It would have been obvious...that the massaging surfaces disclosed by *Feng* could be removable as taught by *Moriyasu*. Thus making it possible to replace a damaged massaging surface." The Applicant respectfully *disagrees* that *Feng* substantially discloses the device as claimed as described above and that that *Moriyasu* discloses "removable massage attachments" as claimed.

The vibrating units disclosed in *Moriyasu* are permanently fixed in the mat and are not removeable. The number or positioning of the vibrating units on the mat can be determined at the time of manufacture (Col. 3, lines 39-41) but are not "removable" by the user as claimed by the Applicant. Furthermore, there is no incentive, suggestion or motivation found in *Moriyasu* to have removable vibrating units because removable units would "confuse" or render useless the control unit of the apparatus to respond to an audio frequency from an audio source in a concerted manner. In other words, the *Moriyasu* control functions require the vibrating units to be at a predetermined position on the mat.

Accordingly, the combination does not have all of the elements claimed by Claims 13-15 and therefore is not obvious in view of the references and the rejections should be withdrawn.

(d) Claims 20 and 24.

Claims 20 and 24 were rejected under 35 U.S.C. §103(a) as being unpatentable over *Feng* (5,858,985) in view of *McDermott* (5,161,879) and *Trivett* (6,573,854). In support of the rejection, the Examiner states, "It would have been obvious...that the flashlight having LED's as taught by *McDermott* could be substituted for the flashing light as taught by *Trevett* in order to use the LEDs to control the flashing light."

The Applicant submits that there is a difference between a "flashing light" and a

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"flashlight" given the typical definitions of these terms. In addition, there is no mention or suggestion of a "flashlight" in the locator of Trivett and the substitution of a flashlight changes the function of the mode indicator LED 61 of Trivett to a different function altogether. The Trivett locator mode indicator lights have no illuminating functions.

McDermott discloses a "Flashlight For Covert Operations" that is powered by two batteries and may have multiple light emitting sources. This patent discloses a light that has a "variable polarizing means" (abstract) that restricts the observability of the beam from the side for covert operations. There is nothing in McDermott that would suggest that the light could be combined with a remote control for an electronic entertainment device" as claimed. Nor is there any suggestion, incentive or motivation found in Feng or Trivett to combine a flashlight with a remote control or a massage unit.

Accordingly, there is no suggestion, incentive or motivation found in Feng, McDermott or Trivett to combine the polarized flashlight with a massage device and locator unit.

Finally, as stated above, the Feng reference does not disclose an integrated remote control and massage device and therefore the combination of Feng, McDermott and Trivett does not render the invention as claimed in Claims 20 and 24 and the rejections should be withdrawn.

(e) Claims 21-23.

Claims 21-23 were rejected under 35 U.S.C. §103(a) as being unpatentable over *Feng* (5,858,985) in view of *Schettino* (6,236,621). In support of the rejection, the Examiner states, "It would be obvious...that the sound recording device taught by *Schettino* could be placed in the housing disclosed by *Feng*..."

The Applicant respectfully disagrees and submits that the alarm clock with a recorded message alarm disposed within a pillow of *Schettino* does not suggest, or provide an incentive or motivation to place a recorder within the housing of the *Feng* massager or to couple a recorder to a "remote control input interface" as claimed. The

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Schettino reference for the pillow alarm does not provide any suggestion, incentive or motivation to combine the alarm with a massager. Nor is there any suggestion, teaching or motivation that could be derived from either reference which would cause a person having ordinary skill in the art to so modify Feng massager. Neither Feng nor Schettino addresses the problem, nor suggests a solution.

Furthermore, neither reference individually cited by the Examiner, nor the combination thereof, suggests, teaches or provides motivation for a "remote control input interface" that "controls one or more entertainment devices" with a "housing with a massage surface" and "a sound recorder" as recited in the Applicant's claims.

Therefore, Claims 21-23 recite structure which is patentable over the cited references for purposes of 35 U.S.C. § 103.

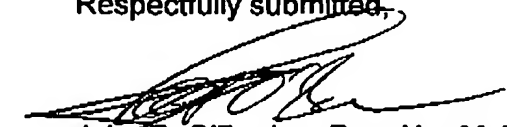
3. Conclusion.

Based on the foregoing, Applicants respectfully request that the various grounds for rejection in the Office Action be reconsidered and withdrawn with respect to the presently amended form of the claims, and that a Notice of Allowance be issued for the present application to pass to issuance.

In the event any further matters remain at issue with respect to the present application, Applicants respectfully request that the Examiner please contact the undersigned below at the telephone number indicated in order to discuss such matter prior to the next action on the merits of this application.

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Respectfully submitted,



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